

Resolution No.:	<u>16-1520</u>
Introduced:	<u>October 19, 2010</u>
Adopted:	<u>October 19, 2010</u>

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND**

---

By: District Council

---

**SUBJECT:** Approval of Development Plan Amendment (DPA) 10-2; Battery Lane, G-808

**OPINION**

The application for Development Plan Amendment (“DPA”) No. 10-2 was filed by Battery Lane, LLC on February 1, 2010. It seeks to amend the previously approved development plan for the Woodmont View project in Bethesda to add 10 feet 8 inches to the height of the approved residential building, for a maximum building height of 90 feet. The property consists of approximately 22,618 feet of land in the PD-75 zone, located at the northwest corner of Woodmont Avenue and Battery Lane, in Bethesda. It is currently improved with a single-family house, a 4-story office building, and associated asphalt paving for parking and driveway access.

Zoning Application G-808, approved on March 30, 2004, reclassified the site from the C-T zone to the PD-75 zone. The development proposal was for 10 townhouses designed to match the architectural appearance of the existing single-family house, built at the northern end of the property in phase one. The maximum building height, per the Woodmont Triangle Amendment to the Bethesda CBD Sector Plan, was 65 feet. There is no specific height limit in the PD zone; it is to be established at the time of site plan.

The development proposal approved in the 2004 rezoning, which called for the construction of 11 townhouses, was revised in April 2007 by DPA-06-1. The development plan, as amended, allowed development of the site with an eight story, 46-unit residential building, including 8 MPDUs, at a building height of 79 feet, 4 inches, and a commercial use on the ground floor of the residential building. The existing single-family house on the northern end of the site was to be retained, but the existing four-story office building on the southern extreme of the property would be demolished.

In November 2008, the applicant filed for approval of a site plan for the multi-story building with 46 dwelling units, the restaurant, and the single-family house. Under the site plan application, building height would be increased from 79 feet 4 inches to 90 feet. The site plan was approved by the Planning Board on July 23, 2009 with a condition limiting building height

to 79 feet 4 inches as approved by DPA-06-1, but the Board acknowledged that a building height of 90 feet did not create issues with respect to compatibility, because taller buildings in the immediate vicinity either already existed or had been approved. The Board made it clear that if DPA-06-1 was amended to allow the additional height, the site plan did not need to come back for further review.

The current development proposal would retain the existing single-family house, now occupied by the Children's Inn, and provide a multi-story, 46 unit residential building, with nine MPDUs, and a commercial use on the ground floor. The increased building height would permit the applicant to change the unit mix to an all two-bedroom building, provide higher ceilings for all units, and increase the amount of green space.

The applicant has an approved development plan and an approved site plan for construction of the residential building at 79 feet 4 inches. Development Plan Amendment 10-2 as proposed by the applicant does not involve a change in the area zoned, the proposed uses, or development density. However, Technical Staff of the Maryland-National Capital Park and Planning Commission recommended against approving the DPA because it felt that increasing the building height 10 feet 8 inches above the already increased 79 feet 4 inch height would be a substantial departure from the Sector Plan's recommended 65-foot height limit. *See* Technical Staff reported of July 1, 2010 (Exhibit 28). The Montgomery County Planning Board disagreed. *See* Planning Board letter of July 27, 2010 (Exhibit 30).

At its regular scheduled meeting on July 15, 2010, the Planning Board voted unanimously to recommend approval of DPA-10-2. The Planning Board found that the application is consistent with the purposes of the Planned Development (PD) zone and it satisfies all relevant standards of the PD-75 zone. The Board, in disagreeing with its staff, found the application to be in substantial compliance with the land use recommendations of the 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan and the 1994 Bethesda CBD Sector Plan. The Planning Board specifically considered whether it is appropriate and legally permissible to further increase the height of the development.

The Board expressed concern that, since the approved height already exceeds the master plan limit to accommodate the MPDUs, and the current application does not change the number of MPDU units, the proposal may not be in conformance with Section 59-D.1.61(a)(1). However, during the discussion, the applicant expressed an intention to increase the number of MPDU units by converting one of the market rate units into a two-bedroom MPDU unit, bringing the total number of MPDUs to 9 (19%). The Board considered the additional MPDU proffered by the applicant and found it to be a needed addition to the housing stock, particularly because it would be an affordable housing unit in the Battery Lane area of Bethesda.

The applicant also expressed an intention to make all units in the building two-bedroom dwellings, providing an unusually large number of two-bedroom MPDUs. This can only be achieved with the additional height requested. The Board found that providing a higher percentage of MPDU units (19%) as part of the proposed development and the need for additional height to accommodate the MPDUs in an all-two-bedroom building design ensured compliance with the Ordinance (Section 59-D-1.61(a)(1)). The Planning Board noted that

Section 59-D-1.61(a)(1) allows for the Master Plan height limit to be exceeded to the extent necessary to accommodate MPDU and bonus density units.

The Board suggested that the Binding Elements proffered by the applicant be amended to reflect the following elements:

1. The maximum number of dwelling units will be 47, including **19% MPDUs (or 9 MPDUs)**.
2. The building height is proposed **with a maximum height of** 90 feet 0 inches measured from the pavement centerline along Woodmont Avenue to the highest point of the main roof slab (the roof area covering the major area of the building excluding mechanical, access, elevator penthouses, and decorative gables).
3. The minimum setbacks will be 0 feet for the front yards at Woodmont Avenue and Battery Lane, 11.5 feet for the side yard to the west, and 40.5 feet for the rear yard from existing building at the north property line.
4. The minimum green space will be 30% of gross tract area.
5. All green areas (including the active/passive recreation rooftop green area) for the condominium building will be accessible to the residents of the condominium building.
6. The maximum building coverage will be **60.5%** of the site.
7. The minimum number of parking spaces for the residential units will be 54, and the number of parking spaces for the commercial use will comply with the Zoning Ordinance.
8. This property is subject to a Common Driveway agreement recorded at Liber 26425, folio 122 among the land records of Montgomery County. The Common Driveway agreement sets forth the agreement between the subject property owners and the adjacent property owner to share certain portions of the restrictive properties for mutual ingress and egress from Battery Lane in order to achieve more efficient, convenient, and safer access to both properties.
9. Applicant shall submit a revised stormwater management concept plan to be approved prior to site plan.
10. The street commercial space in the planned building will be occupied by a “quality restaurant” as described in the Institute of Transportation Engineers (ITE) trip generation manual 7<sup>th</sup> edition, page 1703, not by any more intensive commercial use (i.e. one producing more peak hour traffic).

On October 8, 2010, the applicant submitted a revised Development Plan to Technical Staff reflecting the revised Binding Elements in accordance with the Planning Board's recommendations. *See* Revised DPA 10-2 (Exhibit 35(a)).

The Planning Board further determined that because the proposed amendment will not result in a substantial change over the last approved plan, in terms of design, scale and massing, a public hearing by the Hearing Examiner would not be necessary and that the case should be sent directly to the Council for final decision.

There has been no opposition to DPA 10-2, and no request has been made for a hearing. Therefore, under the provisions of Zoning Ordinance §59-D-1.74(c)(3), "the office of zoning and administrative hearings [OZAH] must forward the planning board's report and recommendation directly to the council," without a hearing by OZAH. In these kinds of cases, a draft resolution is prepared by OZAH based solely on the record prepared by Technical Staff, the Planning Board's transmittal letter and Applicant's compliance therewith.

The record is now complete, and the matter can be considered directly by the District Council without the need for a hearing or recommendation by the Hearing Examiner.

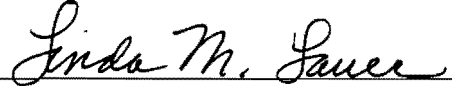
The District Council has reviewed DPA 10-2 and concluded that the DPA meets the requirements of the Zoning Ordinance, and its approval would be in the public interest. Based on this record, the District Council takes the following action.

### ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, approves the following resolution:

DPA 10-2, which requests an amendment to the Development Plan approved in April of 2007 in DPA 06-1, by allowing a maximum building height of 90 feet, by including 19% (9 MPDUs) and by specifying a maximum building coverage of 60.5%, **is hereby approved**, subject to the specifications and requirements of the Development Plan Amendment, Exhibit 35(a), **provided that** the DPA is submitted to the Hearing Examiner for certification within 10 days of the District Council's action, pursuant to the provisions of Zoning Ordinance §59-D-1.64.

This is a correct copy of Council action.

  
Linda M. Lauer, Clerk of the Council